



BRIEFING: FEBRUARY 10, 2015 BOARD MEETING AGENDA ITEM #5

TO: Chairman Richard and Board Members

FROM: James Andrew, Assistant Chief Counsel

DATE: February 10, 2015

RE: Consider Adopting Findings Required by Government Code section 51292 (Agricultural Preserve/Williamson Act) for 132 parcels under Williamson Act contract in Kings County and 49 parcels under Williamson Act contract in Tulare County (CP 2-3)

Summary of Requested Action

At the Board's August, September and November meetings, the Board made legally-required findings under Government Code Section 51292 for all the land parcels in contracts under the Williamson Act in Madera and Fresno counties that are necessary (small portions of which, in most cases) for the HSR project. In this February item, staff requests the Board make the same type of findings, but this time for (a) the 132 parcels the HSR project will require in Kings County and (b) the 49 parcels the HSR project will require in Tulare County. In most cases, the HSR project will only require a small portion of the parcels. The findings are required before acquisition can occur. The parcels are located in the Construction Package (CP) 2-3 area. See Exhibits A – C for maps showing the parcels, and Exhibits D and E for lists of the parcels. The Board would make the findings by adopting draft Resolution #HSRA 15-05, attached hereto.

Discussion and Background

The Williamson Act requires¹ that, prior to acquiring land for a public improvement that is within a designated agricultural preserve, the public agency implementing the improvement make certain findings. The findings are: (a) the land is not being selected because of its lower property value given it is in an agricultural preserve; and, (b) there are no reasonably feasible alternative locations for the improvement.

¹ Most of the basic background information in this memorandum about the Williamson Act and its requirements is the same as in the August, September and November Board memoranda, but is repeated here for completeness.

Williamson Act

Generally speaking, the Williamson Act (Government Code section 51200 et seq.) allows an owner of certain farmlands to enter into a contract with the local County that requires the owner to keep the property in agricultural use/production for a period of time – 10 years for the basic contract generally known as a Williamson Act Contract, and 20 years for a special enhanced version generally referred to as a Farmland Security Zone Contract. In return, the County agrees to tax the property for the contract duration at a valuation based on agricultural use rather than some higher value based on a speculative non-agricultural use of the property. One hundred thirty two parcels (132) in Kings County and 49 parcels in Tulare County in the CP 2-3 alignment are subject to a Williamson Act Contract or Farmland Security Zone Contract.

Steps in Williamson Act Compliance

In carrying out the high-speed rail project, the Authority must comply with the requirements of the Williamson Act, Government Code sections 51291 and 51292. The Williamson Act requires three specific steps (these apply equally to a Williamson Act Contract or Farmland Security Zone Contract because both types of contracts are under the Williamson Act).

In the first step, the Authority must provide notification to the Department of Conservation and the local land use authority whenever it appears that land within an agricultural preserve may be required for a public use. (Gov. Code, § 51291(b).) The notification must include, among other things, an explanation of the Authority's preliminary consideration of the findings required pursuant to Government Code section 51292, which states:

"No public agency or person shall locate a public improvement within an agricultural preserve² unless the following findings are made:

(a) The location is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve.

(b) If the land is agricultural land covered under a contract pursuant to this chapter for any public improvement, that there is no other land within or outside the preserve on which it is reasonably feasible to locate the public improvement."

The Authority has accomplished this notification step through staff-level communications to the Department of Conservation, Kings County and Tulare County for the 132 Kings County parcels and 49 Tulare County parcels in this agenda item.

In the second step, the Williamson Act requires the Authority Board to make the findings under Government Code section 51292 prior to acquiring land that is within an agricultural preserve or

² All properties that have a Williamson Act Contract or Farmland Security Zone Contract (like the ones that are the subject of this Board item) are in locally-designated "agricultural preserves." The steps described in this memorandum apply to all properties in an agricultural preserve.

subject to a contract under the Williamson Act. This step is the subject of this agenda item and is discussed further below.

In the third step, the Authority must provide notice to the Department of Conservation after acquiring land that is within an agricultural preserve.

For parcels subject to a contract under the Williamson Act, like the parcels that are the subject of this agenda item, the Authority intends to negotiate the purchase with willing sellers. However, where the Authority is unable to do so, the Authority will acquire the properties pursuant to eminent domain. When acquired either under eminent domain, or in lieu of eminent domain, the contract will terminate as to the land acquired at the time of acquisition.

The acquisition area that is the subject of this February Board item is part of CP 2-3, and is shown on the attached maps Exhibits A, B and C. Lists of these parcels are included in Exhibits D and E.

The findings required by Government Code section 51292 can be made for acquisition of these parcels for the following reasons:

Findings Required by Government Code Section 51292 – Kings County and Tulare County

The location of the high-speed rail alignment in the Fresno to Bakersfield section of the statewide system is not based primarily on a consideration of the lower cost of acquiring land in an agricultural preserve. As explained in the 2014 Fresno to Bakersfield Final EIR/EIS, the high-speed rail (HSR) system has been established as an approximately 800-mile train system with the purpose of providing a reliable high-speed electric train service that links the major metropolitan areas of the state and that delivers predictable and consistent travel times. (Final EIR/EIS, § 1.2.1.) The Fresno to Bakersfield section is an essential part of the statewide HSR system and connects the San Joaquin Valley with the rest of the system. (§ 1.2.2.) HSR service to stations in Fresno and Bakersfield were identified as part of the statewide system in 2005 through the program environmental review process. (Resolution #HSRA 05-01; Statewide Final Program EIR/EIS, Ch. 6A; Fresno to Bakersfield Final EIR/EIS, § 2.1.2.) Corridors for the HSR system along the coastal corridor and I-5 corridor were eliminated from study at the program level because they were determined to not sufficiently meet the project purpose and need in terms of ridership potential, connectivity, and accessibility. (Statewide Final EIR/EIS, § 2.6.8.) The main “backbone” of the HSR system runs through the Central Valley, rather than avoiding it, specifically to provide transportation connectivity to the intermediate markets in Fresno and Bakersfield, as well as others.

The Authority based its selected location for the alignment between Fresno and Bakersfield on a multiplicity of factors, as evidenced in the Final EIR/EIS, and not primarily on the lower cost of acquiring land in an agricultural preserve. (Resolution #HSRA 14-10.) Factors the Authority weighed in selecting the Preferred Alternative included natural resource impacts, community resources impacts including impacted agricultural lands, capital costs, constructability issues, and regulatory considerations.

(Final EIR/EIS, Ch. 7.) Importantly, the alternatives studied in the EIR/EIS presented a range of impacts on agricultural lands and a range of impacts on parcels subject to Williamson Act contracts. The route/alternative the Board selected in May 2014 (the Preferred Alternative) had fewer acreage and parcel impacts for Important Farmland and land in contracts under the Williamson Acts than, for example, the BNSF alternative that the Board did not select. (Final EIR/EIS, Table 7.2, “Community Resource Impacts in the Fresno to Bakersfield Section”.)

In addition, the Corps of Engineers and the US Environmental Protection Agency concurred that the Preferred Alternative was the least environmentally damaging practicable alternative, allowing it to qualify for obtaining a Clean Water Act section 404 permit rather than the other alternatives studied in the EIR/EIS. (December 19, 2013, letter from M. Jewell, USACE, to Mark McLoughlin, CHSRA and a December 19, 2013, letter from C. Dunning, US EPA, to David Valenstein, FRA, and Mark McLoughlin, CHSRA, re: Response to November 2013 Request for Agreement on “Checkpoint C” – Preliminary Least Environmentally Damaging Practicable Alternative and Draft Mitigation Plan for California High-Speed Rail Project Fresno to Bakersfield Section.) Lastly, project cost estimates contained in the Final EIR/EIS included property acquisition costs based on market land values assuming none of the properties had contracts under the Williamson Acts or were within agricultural preserves.

For the agricultural parcels in contracts under the Williamson Act that are planned for acquisition, there is no other land within or outside the agricultural preserve on which it is reasonably feasible to locate the high-speed rail project. As explained above, the fundamental purpose of the HSR system includes connecting the major metropolitan areas of the state, including the cities of Fresno and Bakersfield along with the north and the south parts of the state. Physically, it is not reasonably feasible to place a new linear transportation corridors connecting Los Angeles and San Diego in the south with San Francisco and Sacramento in the north, and also serving Fresno and Bakersfield, without crossing any lands in an agricultural preserve (i.e., lands in contracts under the Williamson Act).

Moreover, the HSR system has unique performance criteria that require, among other things, a guideway with access control, specific track geometry for passenger comfort, capability of safe and efficient operations at speeds over 200 mph, a fully dual track mainline with off-line station stopping tracks, and capable of normal maintenance activities without disrupting operations. (Final EIR/EIS, Table 2-1.) These performance criteria, particularly the speed criteria, require a track alignment that has greater spiral and curve radii – meaning that for the track alignment to change elevation or to curve to avoid a particular feature requires the considerable distance of 1,800 feet. This factor in particular constrains the HSR design from incorporating refinements that could avoid parcels in agricultural preserves entirely on a parcel-by-parcel basis.

Similarly, the plan for the HSR system to be fully grade separated in CP 2-3 requires that the system have no at-grade crossings between the HSR guideway and perpendicular roads. Roads will be grade separated, and the design of the roadway grade separations are

best done in conformance with local design speed requirements. It is therefore not reasonably feasible to revise the design of road overcrossings and undercrossings to make them narrower or with sharper curves, because this would reduce the design speeds and be out of preferred conformance with local requirements. The overcrossings generally would not be owned and maintained by the Authority. They would be maintained by the respective county. When design allows, the overcrossings are designed to involve a 4:1 slopes instead of 2:1 slope. The gentler slope when design allows results in a larger amount of farmland incorporated into the project.

Under the Williamson Act, parcels must be of a minimum size (generally set by each county) to qualify for a Williamson Act Contract (10 year duration) or Farmland Security Zone Contract (20 year duration). Of the 181 parcels the HSR project would acquire (a portion, in most cases) that are the subject of this agenda item, only 6 would fall below the county minimum parcel size as a result of the HSR project property acquisition.

Although the linear nature and location of the HSR alignment requires the acquisition of some parcels or portions of parcels that are subject to contracts under the Williamson Act and within agricultural preserves (*i.e.*, avoiding these parcels entirely is not feasible), the Authority has taken a number of steps to reduce adverse impacts to agricultural lands. Specifically, the Authority has entered into an agreement with the Department of Conservation Farmland Conservancy Program to fund the purchase of agricultural conservation easements on farmland from willing sellers in the Fresno to Bakersfield section. This program will preserve eligible farmland in an amount commensurate with the quantity and quality of the taken/converted farmlands, within the same agricultural regions as the impacts occur, at a replacement ratio of not less than 1:1 for lands that have been converted from agricultural use. In addition, the Authority will provide an additional increment of Important Farmland mitigation acreage, above the 1:1 minimum ratio, at a level consistent with the terms of a settlement agreement the Authority reached with agricultural interests in *County of Madera, et al. v. California High-Speed Rail Authority*.

Staff Recommendation

Staff recommends that the Board adopt the findings required by Government Code section 51292 for the parcels shown in Exhibits A to C and listed in Exhibits D and E by approving the attached draft Resolution #HSRA 15-05.

Attachments

- Exhibit A: Map showing parcels affected by HSR that are subject to contracts under the Williamson Act (both regular and enhanced Farmland Security Zone) in CP 2-3 (Kings County)
- Exhibit B: Continuation of Map showing parcels affected by HSR that are subject to contracts under the Williamson Act (both regular and enhanced Farmland Security Zone) in CP 2-3 (Kings County)

- Exhibit C: Map showing parcels affected by HSR that are subject to contracts under the Williamson Act (both regular and enhanced Farmland Security Zone) in CP 2-3 (Tulare County)
- Exhibit D: Table listing parcels affected by HSR that are subject to contracts under the Williamson Act (both regular and enhanced Farmland Security Zone) in CP 2-3 (Kings County)
- Exhibit E: Table listing parcels affected by HSR that are subject to contracts under the Williamson Act (both regular and enhanced Farmland Security Zone) in CP 2-3 (Tulare County)
- Draft Resolution #HSRA 15-05

Attachment 1

CP 2-3 and CP 4 Required Mitigation Tables

CP 2-3 and 4 - Impacts on Aquatic Resources under Jurisdiction of CWA Sections 404 and 401

Impact Type	Watershed of Impact	Impact Type	Total Impacts
Emergent Wetlands	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	0.01
		Indirect Bisect	--
Seasonal Wetlands	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	1.556
		Indirect Bisect	--
Vernal Pools and Swales	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	5.63
		Indirect Bisect	11.53
Seasonal Riverine	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	2.08
		Indirect Bisect	--
Canals/Ditches	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	52.43
		Indirect Bisect	--
Retention/Detention Basins	Tulare–Buena Vista Lakes HUC 6 (180300)	Direct Permanent	36.90
		Indirect Bisect	--

NOTE: Exact mitigation requirements will be specified in the permits.

CP 2-3 and 4 - Proposed Compensatory Mitigation to Offset Impacts on Wildlife

Resource Type	Project Impacts (BO Max.)	Project Impacts	Proposed Compensation Strategy	Proposed Mitigation Acreage
Vernal pool fairy shrimp	29.77 ac direct 103.52 ac indirect	4.20 ac direct 27.26 ac indirect	2:1 Preservation	62.80 ac
Vernal pool tadpole shrimp	0.004 ac direct 0.056 ac indirect	0.004 ac direct 0.056 ac indirect	2:1 Preservation	0.12 ac
California tiger salamander (lacustrine)	18.7 ac	11.88 ac	0.1:1	1.19 ac
California tiger salamander (upland)	18.3 ac	8.94 ac	3:1	26.82 ac
Blunt-nosed leopard lizard	98.06 ac	36.41 ac	3:1	109.23 ac
Swainson's hawk	N/A	2,057.83 ac	Following guidance of 1994 Staff Report	1,492.91 ac
San Joaquin antelope squirrel	N/A	62.03 ac	3:1	186.09 ac
Tipton kangaroo rat	453.85 ac	148.95 ac	3:1	446.85 ac
San Joaquin kit fox	5,351.23 ac	3,449.82 ac	See Table 2 of the BO	1,547.07 ac

NOTE: Exact mitigation requirements will be specified in the permits.